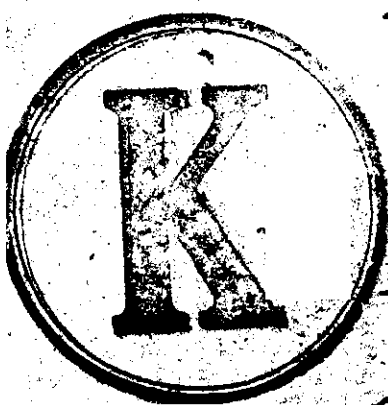


1952.

File No. O. Money
Lenders/52
Legal Department

A BRANCH



Subject:—

Opinions under the
Bombay Money Lenders
Act 1946

P 17E

File No. O. Money Lenders/52

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OFFICE OF THE R.L.A.

The question raised for the R.L.A.'s consideration is whether in cases where a vendor in collusion with the vendee executes a separate document embodying a condition of resale, the transaction would be a mortgage.

The effect of the proviso to clause (c) of section 58 of the Transfer of Property Act is that if the condition of transfer is not embodied in the document which effects or purports to effect a sale, the transaction will not be regarded as a mortgage. The reply to the question would therefore be in the negative.

Sd/ P. M. Lad.

Remembrancer of Legal Affairs.

U.R. to D.D. No. 977, dated the 22nd January 1952.

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LEGAL DEPARTMENT.

It is true that under rule 6 of the Rules of the Chit Fund the bid amount may work out higher than the rate of interest permissible under the Bombay Lenders Act, 1946; but the instalment of the Chit Fund which is auctioned among members is not a loan within the meaning of section 2(9) of the Bombay Money Lenders Act and consequently the amount offered more than the face value of chit cannot be considered as interest.. In the circumstances the R.L.A. sees no reason to reconsider his opinion.

Sd/ J.R.D.

~~Additional~~ Secretary to Government.

U.R. to H.D. No.3085, dated the 6th February 1952.

EKN.19/6/

Office of the R.L.A.

The breach of section 18, 19 and 25 of the Bombay Money-lenders Act, 1946 is punishable under section 34. Consequently the heirs of a deceased Licensee cannot be held liable for the breach of those provisions of the Act as it stands. However it appears necessary that after the death of a money lender his heirs, executors and administrators should be made liable to comply with the provisions of sections 18, 19 and 25 of the Act in respect of the Advances made by him; otherwise the object of the Act is likely to be frustrated. The Act may be amended for the purpose.

Sd/ P. M. Lad.

Remembrancer of Legal Affairs.

U.R. to D.D.No.2886, dated the 22nd February, 1952.

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Office of the R.L.A.

Bombay Money
Lenders Act,
1946.
section 2(9)

R.L.A.'s opinion
No.1055-Conf1.
dated the 19th Dec-
ember 1951.

For the reasons stated in R.L.A.'s opinion No.1055-Conf1. dated the 19th December 1951 the contention of the Registrar General of Money Lenders that M/s.Govindram Ghanshamdas and Co. can be said to be carrying on the business of money lending, was negatived. The Registrar General has now stated that the question whether the specimen Hundi the question is promissory note or a bill of exchange has an important bearing on the present case, as such hundis are primarily meant for evading the provisions of the Act. He was also requested instructions of Government on the point whether in cases wherein the examination of account books reveals an element of moneylending, prosecutions could be sustained. The R.L.A. is requested to advise.

Under section 4 of the Negotiable Instruments Act the essential ingredients to make an instrument a promissory note are that; it must be in writing; there must be an unconditional undertaking to pay; it must be signed by the maker; the amount promised to be paid by the instrument must be certain and finally the payee must also be certain. The Hundi in question is signed by a broker and is issued to a broker, and does not appear to be a promissory note. This question is not however very relevant in this case. As stated in R.L.A.'s opinion No.1055-Conf1. dated the 19th December 1951 a film producer is both a trader as well as a manufacturer and a loan to him would ~~not be a loan as a manufacturer and a loan to him would~~ not be a loan within the meaning of section 2(9) of the Bombay Money Lenders Act, 1946. It is therefore difficult to understand the stand taken by the Registrar General of Money Lenders. Even if the books of account reveal an element of moneylending, the dealings in favour of a trader or manufacturer being outside the purview of the Act no action against such money-lenders can apparently be taken and no investigation of the nature of the transaction.....

transaction would be useful.

Sd/- P. A. Lad.

Remembrancer of Legal Affairs.

U.R. to D.D., No.272-Confl, dated the 19th March 1952.

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Office of the R.L.A.

The Provisions contained in Sections 18 and 19 are by way of protection afforded to the debtors against any malpractices or manipulations adopted by the money-lender in maintaining accounts. Under clause (a) of section 21, the Court is required to frame and decide the issue whether the money-lender has or has not complied with ~~the provisions of sections 18 & 19. That compliance can~~ ^{the only} relate to the period before the matter was brought ^{to} ~~the~~ Court. The suit will be filed in respect of the balance drawn after the accounts are taken and such accounts are placed before the Court. Once the suit is filed the Court is really seized of the matter; and any accounting to be done thereafter can only be under its directions, if such directions become necessary. Therefore it would not be necessary for the money-lender to comply with the provisions of sections 18 and 19 after the suit is filed. The view expressed by the Registrar General appears to be correct.

Sd/ P. M. Lad.

Remembrancer of Legal Affairs.

U.R. to D.D.No.9707, dated the 11th June 1952.

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Office of the R.L.A.

The questions referred for advice to the R.L.A.
are:-

- (1) For what period a licence should be granted under the Bombay Money-lenders Act, 1946, when the Court issues a direction under section 10 of the Act to a money-lender to produce a licence before passing a decree; and
- (2) at what rate should be arrears a licence fee be charged in such cases.

2- Section 10(1) of the Act provides that after the expiry of six months from the date on which this Act comes into force, no court shall pass a decree in favour of a money-lender in any suit filed by a money-lender to which this Act applies unless the court is satisfied that at the time when the loan or any part thereof to which the suit relates was advanced, the money-lender held a valid licence. Sub-section (2) then goes on to provide that if during the trial of any such suit the court finds that the money-lender had not held such licence, the court may on the application of the money-lender stay the hearing of the suit and require him to produce within a period of three months a licence, on payment to the Registrar of all the arrears of the licence fees payable by him under this Act for the period commencing from the date on which he started the business of money-lending or the expiry of six months from the date on which this Act came into force, whichever is later, together with such penalty not exceeding Rs.500 as the court may direct. The provisions of sub-section (1) and particularly the underlined words make it clear that the intention of the section is that the holding of a valid licence at the time when the loan was advanced is a pre-requisite for claiming a decree. Although sub-section (2) expects the court to.....

to require the money-lender to produce " a licence", these words must naturally be construed in the light of the provisions of sub-section (1) and the words "such licence" occurring in the opening part of sub-section (2) and the money-lender is therefore expected to produce what he would have otherwise been required by law to produce before asking relief from the court. Therefore, the licence must be a licence commencing from the date specified in sub-section (2) and which would have been treated as a valid licence at the time when the loan was advanced and not merely a licence which should be treated as a valid licence at the time when the loan was advanced. A licence is valid under section 9 from the date on which it is granted to the 31st of July following. It follows, therefore, that the licence required by sub-section (2) would ordinarily be the licence which must be for a period which commences from the date on which he started business on the expiry of six months from the date on which the Act came into force, whichever was later, and ending with the 31st of July following the day on which the loan or any part thereof to which the suit relates was advanced. It must, however, be added that if the business of money-lending was being done by the money-lender even after the 31st of July just indicated, he would be required to take a licence so long as that business continues; and unless his application for the licence is for the entire period of the business, even after the 31st of July of the particular year in which the loan was advanced, a licence may be refused to him on the ground that he has not complied with the provisions of the Act as required by clause (b) of section 8(1). If the business is continued beyond the 31st of July of the year in which the loan which is the subject-matter of the suit was advanced, then, for practical purposes

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the money-lender must necessarily make an application for a licence covering the entire period of his business right upto the date of the application.

5. Under the proviso to section 6(4) of the Act where an application for a licence is made after the expiry of the period prescribed by rules in respect of such application, it shall be accompanied by a licence fee at double the rates specified in the sub-section. Sub-section (2) of section 10 contemplates the payment to the Registrar of all the arrears of licence fees payable by the money-lender under the Act. Section 11 which lays down the procedure for getting a licence upon a direction of the court under section 10(2) also provides that the licence can be granted on payment of the arrears of licence fees and the penalty if any directed by the court to be paid. It is, therefore, obvious that the penalty directed by the court under sub-section (2) of section 10 is distinct from the payment of the arrears of licence fees. Those are arrears payable under the Act and must naturally be governed by the proviso to sub-section (4) of section 6, although that proviso may itself contain an element of penalty for delay. The arrears of licence fees calculated for the period as determined in the proceeding paragraph must, therefore, be paid in accordance with the proviso to sub-section (4) of section 6 in addition to whatever penalty may have been imposed by the court.

Sd/ P.M. Lad.

Remembrancer of Legal Affairs.

U.R. to D.D-No.9753, dated the 12th June 1952.

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Office of the R.L.A.

Government is not "money-lender" within the meaning of section 2(10) of the Bombay Money-lenders Act, 1946 and that section does not in terms apply to loans advanced by Government (see section 2(9) (c)). Although, therefore there would be no legal objection to Government charging interest at a higher rate than that prescribed under section 25 of that Act, it would not be expedient for Government to do so.

Sd/ P.M. Lad.

Remembrancer of Legal Affairs.

U.R. to F.D.No., 9803, dated the 12th June 1952. .

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Office of the R.L.A.

In R.L.A's opinion No.272.Confl. dated the 19th March 1952, it was inter alia stated that the specimen instrument at page 23 ante was not a promissory note as it was signed not by the maker thereof but by a broker and was issued to a broker. The specimen mudi as now forwarded by the Registrar of Money Lenders is substantitally different from the one at page 23. It is shown to bear the signature of its maker; there is an unconditional promise to pay a definite sum of money to a definite payee and can be considered a promissory note. Another new point brought on record is that the loans have been advanced on such instruments by Messrs.Govindram Chandshyamdass and 80 others to persons who are not traders as defined in section 2(18) of the Bombay Money Lenders Act, 1946. In these cases it would be possible to take action against the persons advancing the loans provided sufficient evidence can be adduced to show that they were really in the nature of advanced at interest by way of credit (see section 2(9)).

Sd/ P. M. Lad.

Remembrancer of Legal Affairs.

U.R. to D.D.No. 914/A-Confl.dated the 12th

EKN.19/6/.

September 1952.

L.D.R.I.No.24669 dt.23-10-62.

Submitted With reference to the note of the D.D.
at pp. 1-2- ante.

For full facts of the case please see the letter dated 9-10-62 of the Registrar General of Money Lenders, Bombay State, Poona. The question for the consideration of the R.L.A. is whether the words "advance in kind" in the definition of the term "loan" in the Bombay Money Lenders Act, 1946 can bring within their purview transactions of Sales of articles made by shop-keepers to their customers on credit, subject to the condition that, in the event of failure on the part of the customer to pay the bill of cost, he would be liable to pay interest on the sale price at a rate stated in the bill.

R.L.A. Sd/ P.M.Lad.

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Office of the R.L.A.

The Development Department's attention is invited to R.L.A's opinion No.9492, dated the 23rd August 1949 where a similar point is considered.

Sd/ P. M. Lad

Memembrancer of Legal Affairs.

U.R. to D.D.No.18085/A, dated the 31st October 1952.

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Office of the R.L.A.

The Bombay Money-lenders Act, 1946, does not prevent a practising pleader or advocate from doing the business of a money-lender, but the doing of such business may amount to professional misconduct or improper conduct inviting disciplinary action by the High Court if there is a rule framed by the High Court requiring a practising pleader or advocate not to engage in trade or business or accept an appointment carrying a salary without previously obtaining the permission of the Bar Council and the High Court. Such a rule has been framed by the Allahabad High Court under section 15 of the Bar Councils Act, 1926. A rule in these very terms has not been framed by the Bombay High Court. The Bombay High Court, however, has recently made rules under section 9 of the Bar Councils Act, 1926, and section 31(1) (a) of the Bombay Pleaders Act, 1920, requiring an advocate or pleader, as the case may be, who applies for enrolment, to give an undertaking not to practise if he accepts any full time *after he has been enrolled, not to accept - any employment* which in the opinion of the High Court is derogatory to the status of an advocate or pleader, as the case may be. The rule made by the Bombay High Court is limited in its operation and the Legal Department is considering the desirability of approaching the High Court for framing a comprehensive rule on the lines of the rule framed by the Allahabad High Court.

A Sub-Government Pleader, being a part time Government Servant, is in this matter in the same position as any other practising pleader. The Bombay Civil Services Conduct, Discipline and Appeal Rules do not apply to him. Although under the Law Officers Rules also there is no express provision debarring him from carrying on money-lending business, the R.L.A. considers the carrying

on.....

on of such business as derogatory to his position and
proposes to issue a circular to that effect.

Sd/ P. M. Lad.

Remembrancer of Legal Affairs.

U.R. to D.D., No. 14838-A, dated the 11th September 19

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